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IN THE

Supreme Court of the United States

October Term, 1979

No. ~~79~~ 79-820

MINNESOTA MINING AND MANUFACTURING COMPANY,

Appellant,

vs.

STATE OF MINNESOTA, By WILLIAM L. WILSON, DEPARTMENT OF HUMAN RIGHTS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

THOMAS P. KANE
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November 20, 1979

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MINNESOTA MINING AND MANUFACTURING CO.,
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vs.

STATE OF MINNESOTA, BY WILLIAM L. WILSON,
DEPARTMENT OF HUMAN RIGHTS,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF MINNESOTA

JURISDICTIONAL STATEMENT

Minnesota Mining and Manufacturing Company (3M), the appellant, appeals from the final judgment of the Supreme Court of Minnesota, dated August 28, 1979, holding that the Federal Employee Retirement Income Security Act of 1974 does not preempt Minnesota's regulation, through its fair employment practice statute, of 3M's national employee welfare plan.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota, which appears in the appendix hereto, p. A-4, *infra*, is not yet reported.

The Findings of Fact, Conclusions of Law and Order for Judgment of Minnesota District Court Judge James M. Lynch are not reported. They are reprinted in the appendix hereto, p. A-16, *infra*.

The Order for Summary Judgment and Memorandum of Minnesota State Hearing Examiner Ellen Lavin, dated September 16, 1977, are not reported. They are reprinted in the appendix hereto, p. A-34, *infra*.

JURISDICTION

The judgment of the Supreme Court of Minnesota was entered on August 28, 1979. See appendix, p. A-2. A Notice of Appeal to this Court was duly filed in the Supreme Court of Minnesota on November 13, 1979. See appendix, p. A-1. This appeal is being docketed in this Court within 90 days from the date of the entry of judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974 ("ERISA") preempts Minnesota's effort, by means of its fair employment practice statute, to dictate the contents of a 3M national employee benefit plan.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions involved herein include the following: U.S. Constitution, Article VI, Clause 2; 29 U.S.C. §1003(a); 29 U.S.C. §1002(3); 29 U.S.C. §1144; Minnesota Statutes §363.03 Subd. 1(5) reproduced as appendix f.

STATEMENT OF THE CASE

This appeal is from the judgment of the highest court of the State of Minnesota that that state's statutory requirement that coverage of pregnancy and childbirth be included in any employee disability benefit plan is not preempted by ERISA, notwithstanding ERISA's express provision that it "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan". 29 U.S.C. §1144.

The object of controversy in this case is 3M's income maintenance plan for salaried employees. That Plan, which provides benefits for absences from work caused by nonwork-related accidents or illnesses, applies uniformly to employees working throughout the 50 states in which 3M is licensed to do business. In 1975, the Plan covered some 23,362 participants across the country. It is undisputedly covered by the terms of ERISA and has been registered with the Department of Labor and assigned plan identification number 41-041775 PN 525. (See Appendix G.)

The complaint by the Minnesota Commissioner of Human Rights which precipitated this litigation was that this benefit plan, although otherwise providing equal benefits without regard to sex, violated the Minnesota Human Rights Act's

prohibition against sex discrimination in employment.[1] Minn. Stat., Ch. 363. The issues in the case soon crystalized around an amendment to this state law, passed on June 2, 1977, which specifically provided, in part, that it was a prohibited employment practice

> (5) For an employer . . . with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work. Minn. Stat. §363.03, Subd. 1(5).

The issues raised by the state's Complaint proceeded to hearing pursuant to the provisions of Minn. Stat. §363.071. The matter, including the issue herein, was submitted to state hearing examiner Ellen Lavin upon cross-motions for summary judgment and a record consisting of depositions and affidavits. On September 16, 1977 the state hearing examiner ruled in favor of 3M,

> It is clear from the legislative history and from the notes accompanying ERISA that one of the main purposes and objectives of Congress was to establish uniform laws throughout the United States insofar as they regard employment benefit plans. Any interference in this objective of uniformity is prohibited by the preemption clause of ERISA.

[1] On April 29, 1979, 3M modified its plan to provide coverage for female salaried employees who experienced absences due to pregnancy or childbirth as required by the Pregnancy Disability Act, 92 Stat. 2076, P.L. 95-555.

The State of Minnesota sought review in Minnesota District Court of the hearing examiner's decision pursuant to Minn. Stat. §§ 15.0424 and 363.072. On May 25, 1978, the District Court reversed the hearing examiner's determination that ERISA preempted Minnesota's instant regulation of 3M's employee welfare plan. The Minnesota Supreme Court subsequently affirmed.

THE QUESTION IS SUBSTANTIAL

The sole basis for the Minnesota ruling here challenged is that the state law in question is exempt from preemption by ERISA because it is preserved under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., which, in turn, is preserved under ERISA. Precedent for this "double savings clause" analysis fundamentally jeopardizes not only the paramount objective of national uniformity of employee benefit plan regulation expressed by Congress, but also the broader power of the federal legislature to protect participants in interstate commerce from inconsistent state regulation while preserving existing uniform federal statutory policies.

The significance of the discrete issue posed by this appeal is further underscored by the number of national employers necessarily affected by inconsistent state regulation of employee benefit plans and by the inconsistent rulings of the Second and Seventh Circuit Courts of Appeal on the question. *Pervel Industries, Inc. v. State of Connecticut Commission on Human Rights*, 603 F.2d 214 (2nd Cir. 1979), affirming 468 F. Supp. 490 (D. Conn. 1978) (petition for writ of certiorari pending); *Bucyrus-Erie Co. v. The Dept. of Industry, Labor and Human Relations of the State of Wisconsin*, 599 F.2d 205 (7th Cir. 1979) (petition for writ of certiorari pending).

ARGUMENT

I. THE MINNESOTA RULING NULLIFIES AN EXPRESS PRIMARY CONGRESSIONAL PURPOSE TO ACHIEVE NATIONAL UNIFORMITY OF REGULATION OF EMPLOYEE BENEFIT PLANS.

A. The Paramount Importance of Uniformity to ERISA's National Regulatory Objectives Is Unmistakable.

There can be no question but that Congress, upon careful deliberation, accorded primacy to the objective of protecting national employers from inconsistent state regulation of employee benefit plans.

The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 *et seq.*, contains a broad preemption provision which states in pertinent part:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to *any employee benefit plan* described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975. 29 U.S.C. §1144 (Emphasis added)

The term "State law" in the preemption provision includes "all [State] laws, decisions, rules, regulations, or other State action having the effect of law". 29 U.S.C. §1144(c)(1).[2]

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[2] 29 U.S.C. §1144(c) and (d) states:
For purposes of this section:
(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, or any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.
(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.
Pub. L. 93-406, Title I, §514, Sept. 2, 1974, 88 Stat. 897, 29 U.S.C. §1144.

> An *employee benefit plan*, as defined in ERISA, includes: any plan, fund or program . . . established or maintained by an employer or by an employee organization, or by both . . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, . . . medical, surgical or hospital care or benefits, or benefits in the event of *sickness, accident, disability*, death or unemployment . . . . 29 U.S.C. §1002(1) and (3). (Emphasis added).

The only state laws specifically exempted from ERISA preemption are laws which regulate insurance, banking or securities.[3] 29 U.S.C. §1144(2)(A).

The legislative history of ERISA demonstrates that the broad coverage of the preemption provision was not accidental but designed to preempt all state law regulating employee benefit plans, with the sole exception of those areas specifically exempted.[4]

---

[3] Employee benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws" are exempted from coverage by ERISA and are therefore subject to State law. 29 U.S.C. §1003(b).

[4] ERISA as proposed in Congress originally had a much narrower preemption provision. For example, ERISA as originally introduced in the House of Representatives stated with respect to preemption:

> EFFECT ON OTHER LAWS
> SEC. 114. It is hereby declared to be the express intent of Congress that except for actions authorized by section 106(e)(1)(B) of this Act, the provisions of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter *relate to the*

Specifically, the history reveals a purpose which supports the comprehensive preemption provision:

> Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying State laws. H.R. Rep. No. 533, 93d Cong., 1st Sess., 12 (1973).

During the initial stages of legislative action regarding ERISA, a conflict developed between the Senate and House versions. A Joint Conference Committee appointed to resolve the conflict adopted the present preemption provisions. The Joint Committee Report stated with respect to ERISA preemption of state law:

> *Preemption of State laws (Sec. 514 of the bill)*
>
> Under the substitute, the provisions of Title I are to supersede all State laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce. (However, following title I generally, preemption will not apply to government plans, church

fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans: Provided, that nothing herein shall be construed to exempt or relieve any person from any law or any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. (Emphasis added). H.R. 2, 93d Cong., 1st Sess. (1973).

The original Senate version of the ERISA legislation was contained in S. 4, introduced on January 4, 1973, and that bill proposed that ERISA supersede State law which related "to the *subject matters* regulated by this Act." See, S. 3, Sec. 609(a).

> plans not electing under the vesting, etc., provisions, workmen's compensation plans, non-U.S. plans primarily for non-resident aliens, and so-called 'excess benefit plans.') S.R. 93-1090, 93d Cong., 2d Sess. 383 (1974).

In addition to the revisions of the original preemption provision and the Joint Committee Report, Legislative history on the floor of the House and the Senate, including explanations by the sponsors, emphasizes the extensive scope of ERISA's preemption.[5]

[5] Congressman Dent, in explaining the Joint Committee changes to the House version, stated with regard to the preemption provision:

> "Finally, I wish to make note of what is to many the *crowning achievement of this legislation, the reservation to Federal authority of the sole power to regulate the field of employee benefit plans.* With the preemption of the field, we round out the protection afforded participants by eliminating the *threat of conflicting and inconsistent State and local regulation.*
>
> * * *
>
> The conferees, with the narrow exceptions specifically enumerated, *applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans.*" 120 Cong. Rec. 29197 (1974).

Senator Williams gave a similar report to the Senate:

> "It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute *are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State* or local government, or any instrumentality thereof, which have the force or effect of law." (Emphasis added). 120 Cong. Rec. 29933 (1974).

Senator Javits, a prime spokesman in originally holding hearings and sponsoring pension reform legislation and a member of the Joint Conference Committee, made the following statement in explaining the preemption provision and why the broad preemption was preferred over a limited preemption:

> ". . . *the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required*—but for certain exceptions—*the displacement of State action in the field of private employee benefit programs.*" (Emphasis added). 120 Cong. Rec. 29942 (1974).

Senator Javits' statement concerning the need for evaluating ERISA's impact also indicates the breadth of the preemption clause.

> The conferees — recognizing the dimensions of such a policy — also agree to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made. 120 Cong. Rec. 29942 (1974).

In light of this conscious decision to risk overbreadth in the interest of achieving national regulatory uniformity, it cannot seriously be disputed that Congress intentionally selected the tool of categorical express preemption to achieve its primary goal of facilitating speedy implementation of ERISA's provisions by minimizing confusion caused by overlapping state regulation.

B. Minnesota Has Fundamentally Challenged Federal Authority by Circuitously Disregarding the Express Preemption Decision of Congress.

By reading into ERISA an exemption for its law manifestly relating directly to employee benefit plans, Minnesota has taken upon itself the prerogative to reassess the wisdom of Congress. If Congress intended to exempt state fair employment laws, it would have specifically so provided, as it explicitly provided for exemption of state laws regulating insurance, banking and securities. The interstate character of employee

benefit plans and the obvious need to provide for uniform regulation of such plans caused the Congress to adopt a broad preemption provision. A narrow preemption clause would have, as Senator Javits stated, "raised the possibility of endless litigation on the validity of State action that might impinge on Federal regulations." 120 Cong. Rec. 29942 (1974).

To tolerate expansive interpretation of federal intentions at the expense of so clear a federal mandate in the context of legislation having the pervasive impact of ERISA is to encourage significant evasion of the fundamental Constitutional principle of the supremacy of federal authority.

The real gravamen of the Minnesota decision from which this appeal is taken is that, in the judgment of the Minnesota Court, the substance of the state law involved does not really conflict with the regulatory objectives of ERISA sufficiently to warrant abrogation of what the Minnesota Court views to be the important policy objectives of the state law. Of course, 3M urgently contends that that judgment is wrong. Of perhaps greater significance to the ultimate import of this case, however, is the important principle that the Minnesota Court ought not to be making such judgments when federal statutory language so plainly preempts a field of regulation for exclusive federal control.

The "double savings clause" rationale invoked below to justify preserving the subject state law is illogical and tortured. It betrays an underlying commitment to second-guess the means clearly chosen by Congress to assure uniform compliance with ERISA. The Minnesota Court implicitly concludes that Congress should have included state fair employment practice laws within the list of those excepted from preemption and that the Court properly ought to remedy the over-

sight. As clearly reflected in the above-referenced legislative history, however, Congress acknowledged the possibility of oversight and chose to reserve for itself the prerogative to remedy it at a later date rather than to foster the confusion-inspiring litigation which would inevitably attend the alternative.

The Minnesota Court's reasoning that any state law preserved by an existing federal law is preserved from ERISA preemption under ERISA's broad disclaimer of infringement of existing federal laws is simply fallacious. The crippling potential impact of such reasoning upon the exclusivity of ERISA's control over national employee benefit plans is difficult to overstate. Title VII tolerates overlapping state laws even where (as was the case here during the time in controversy[6]) they contain inconsistent requirements.[7] This is not to say, nor is there any basis to conclude, that Title VII incorporated into the body of its *substantive* provisions the content of all state antidiscrimination laws. Indeed, such a conclusion is impeached precisely by the coexistence of the diametrically opposed provisions which give rise to the instant lawsuit.

---

[6] September 2, 1976 to April 29, 1979.

[7] Until amended effective April 29, 1979, Title VII was interpreted by this Court in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976) to not mandate the employee benefit plan coverages which Minnesota's law required by statutory amendment on June 2, 1977 and by judicial interpretation in this case.

II. THE MINNESOTA RULING IS CONTRARY TO RECENT DECISIONS OF THE SECOND AND NINTH CIRCUIT COURTS OF APPEAL.

In *Pervel Industries, Inc. v. State of Connecticut Commission on Human Rights*, 603 F.2d 214 (2nd Cir. 1979), aff'g. 468 F. Supp. 490 (D. Conn. 1978), the Second Circuit Court of Appeals concluded that ERISA preempted Connecticut's efforts to apply antidiscrimination laws to the employee welfare benefit plans. The Court rejected the "double savings clause contention" argument accepted by the Minnesota Supreme Court.

> This Court does not accept the reasoning of this double savings clause contention. Section 514(d) of ERISA preserves *federal* law. Connecticut's anti-discrimination law does not become a federal law simply because Title VII preserves its validity as against a claim of preemption by Title VII. Nor is the textual argument significantly enhanced by focusing on §514(b)'s requirement that ERISA should not be construed to 'impair' any law of the United States. Preemption of Conn. Gen. Stat. §31-126(g) by ERISA does not impair any federal law. Title VII did not create new authority for state anti-discrimination laws; it simply left them where they were before the enactment of Title VII. (468 F. Supp. at 493).

A similar "double savings clause contention" was rejected by the Ninth Circuit in *Hewlett-Packard Co. v. Barnes*, 571 F.2d 502 (9th Cir. 1978). There, the State of California argued that its state health care plan act was specifically recognized and preserved by the Health Maintenance Organization Act, 42 U.S.C. §300(e) et seq. and that preemption of

the state statute would interfere with the federal regulatory scheme and thus fall within the exemptions set forth in §514 (d) of ERISA. The Ninth Circuit rejected that argument stating as follows:

> The error in this argument is that ERISA only preempts Knox-Keene as applied to employee benefit plans, and there is nothing to indicate that any HMO is an employee benefit plan. Appellant suggests that some HMO's may in the future 'transform' into employee benefit plans to avoid state regulation, but fails to point out any example of such 'transformation' or, for that matter, any specific conflict between ERISA and the HMO Act. We decline to upset ERISA's preemptive clause on such hypothetical grounds. (571 F.2d at 504).

Furthermore, the "double savings clause" argument is not supported by the legislative history of ERISA. Senators Williams and Javits during the debate on the 1978 age discrimination amendments discussed the impact of ERISA on state age discrimination statutes. In concluding that state statutes would be preempted, the Senators stated as follows:

> Mr. Javits. Finally, Mr. President, it is understood that just as these age discrimination amendments do not interfere with ERISA, State age discrimination in employment laws also are not to interfere with ERISA. The ADEA itself, as pointed out in the Senate report, does not preempt such State age discrimination laws. However, there should be no question that the preemption rules of Section 514(a) of ERISA shall be determinative regarding the preemption of State age discrimination laws which directly or indirectly establish requirements relating to employee benefit plans. ERISA preemption of State age discrimination laws shall be determined without regard to Section 514(d) of ERISA or the fact that the ADEA does not itself preempt State law.
>
> Mr. Williams. I concur in my friend's observations as they accurately state the controlling principles of law in this regard. Federal law will preempt State age discrimination statutes only to the extent that those laws relate to an employee benefit plan described in Section 4(a) of ERISA and are not exempt under Section 4(b) of ERISA. 124 Cong. Rec. §4451 (daily ed. March 23, 1978), as corrected, 124 Cong. Rec. §4767 (daily ed. April 4, 1978) (Emphasis added.)

As the Second and Ninth Circuits have recognized, therefore, the explicit language of the ERISA preemption provision and the legislative history of that statute clearly demonstrate the inappropriateness of judicially amending ERISA to allow for state regulation of interstate employee benefit plans governed by the federal statute.

CONCLUSION

It is no exaggeration that at issue in these proceedings is the power of the federal legislature to decide to preempt state law-making relative to a particular subject even absent clear indication of conflict between federal and state laws. Specifically, at issue is whether Minnesota — and other states in like position — should be permitted to thwart ERISA's clearly articulated policy of assuring national uniformity of regulation of employee benefit plans.

The issue is not whether state employment antidiscrimination laws should be broadly abrogated but, rather, whether those laws should yield to federal regulation only insofar as those state laws relate to ERISA-covered employee benefit plans. This Court should seize this opportunity to repudiate state disparagement of clear Congressional policy by "double savings clause" contentions which can be misapplied to a broad range of federal statutes which by their terms allow concurrent state regulation. This is an issue not previously addressed by this Court, about which United States Court of Appeals and State Supreme Courts have differed.

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE
STATE OF MINNESOTA

MINNESOTA MINING AND MANUFACTURING CO.,
Appellant,

vs.

STATE OF MINNESOTA by WILLIAM L. WILSON,
Department of Human Rights,
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Minnesota Mining and Manufacturing Company, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final Judgment of the Supreme Court of the State of Minnesota affirming that the Federal Employee Retirement Income Security Act of 1974 (ERISA) does not preempt Minnesota's regulation of 3M's ERISA regulated employee welfare plan, entered in this action on August 28, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

OPPENHEIMER, WOLFF,
FOSTER, SHEPARD AND
DONNELLY
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APPENDIX B

STATE OF MINNESOTA, SUPREME COURT

MINNESOTA MINING AND MANUFACTURING CO.,
petitioner,
Respondent-Appellant,
vs.
STATE OF MINNESOTA, by WILLIAM L. WILSON,
Department of Human Rights,
Appellant-Respondent,
and
In the Matter of an Appeal by the State of Minnesota by William L. Wilson, Commissioner, Department of Human Rights, from a Decision of a Hearing Examiner

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed, except that the case is remanded to the district court with directions to enter judgment for the Department of Human Rights on behalf of Judith Troye, whereupon the case is remanded to the hearing examiner for a determination of the members of the class and the amount of damages.

Dated and Signed August 28, 1979

BY THE COURT.
Attest:
JOHN McCARTHY
Clerk

State of Minnesota
Supreme Court—:

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the case therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul August 28, 1979.

JOHN McCARTHY
Clerk.
By WAYNE TSCHIMPERLE
Deputy

STATE OF MINNESOTA
SUPREME COURT

MINNESOTA MINING AND MANUFACTURING CO.,
petitioner,
Respondent-Appellant,
vs.
STATE OF MINNESOTA, etc.,
Appellant-Respondent,
and
In the Matter of an Appeal by the STATE OF MINNESOTA, by WILLIAM L. WILSON, etc.,

TRANSCRIPT OF JUDGMENT

APPENDIX C

(Caption)
ROGOSHESKE, J.
Took no part,
OTIS and TODD, JJ.
Endorsed
Filed August 10, 1979
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

The 1977 version of the Minnesota Human Rights Act (Minn. St. 1977 Supp. c. 363), which defined "sex" to include pregnancy, childbirth, and disabilities related to pregnancy or childbirth and prohibited, as an unfair employment practice, discrimination in the provision of fringe benefits to women affected by pregnancy, childbirth, or disabilities related to pregnancy and childbirth, merely clarified the prior version of the act.

Excluding only pregnancy-related disabilities from an otherwise comprehensive income maintenance plan is per se sex discrimination.

Congress, in adopting the Federal Employee Retirement Income Security Act, did not intend to pre-empt the operation of state antidiscrimination laws such as the Minnesota Human Rights Act.

Only those persons whose rights had been affected by the discriminatory practices within 6 months prior to the date of the commissioner's complaint may be properly included in the class action.

Affirmed as modified and remanded.

Heard before Rogosheske, Peterson, and Scott, JJ., and considered and decided by the court en banc.

OPINION

ROGOSHESKE, Justice.

Minnesota Mining and Manufacturing Company (3M) and the Minnesota Department of Human Rights (department) both appeal from the judgment of the district court in a sex discrimination case arising out of 3M's exclusion from its income maintenance plan (IMP) of women absent from work due to pregnancy. The issues raised on appeal are:

(1) Does the exclusion of pregnancy-related absences from 3M's IMP constitute sex discrimination prohibited by the Minnesota Human Rights Act?

(2) Does the Federal Employee Retirement Income Security Act (ERISA) pre-empt application of the Minnesota Human Rights Act to 3M's IMP?

(3) Did the district court correctly define the class of women represented by the Department of Human Rights?

We hold that the exclusion of pregnancy-related absences from an otherwise comprehensive income maintenance plan is per se sex discrimination within the meaning of the Minnesota Human Rights Act, Minn. St. c. 363, both before and after the 1977 amendments to that act. We further hold that ERISA does not pre-empt the Minnesota Human Rights Act from prohibiting unfair discrimination and that the district court correctly defined the class of women represented by the department in this action. We accordingly affirm the decision of the district court, but we direct that judgment also be granted to the department on behalf of Judith Troye, the individual who originally filed the charge of discrimination. We remand the case to the hearing examiner solely to determine the members of the class and the amount of damages.

On February 6, 1974, Troye filed with the department a charge of discrimination[1] against her employer, 3M. She alleged that 3M denied her and other female employees monetary compensation under its comprehensive income maintenance plan for disabilities related to pregnancy. The department investigated the allegations in the charge, and the commissioner found probable cause to believe that 3M was violating the Minnesota Human Rights Act. On March 2, 1977, after attempts at conciliation had failed, the commissioner issued a class action complaint.

The matter was assigned to a hearing examiner. The department and 3M each moved for summary judgment, and the hearing examiner issued her decision on September 16, 1977. She certified the case as a class action on behalf of all present or former female employees of 3M in Minnesota who were on pregnancy leave of absence from a salaried position at 3M at any time between August 6, 1973, and December 31, 1974. She granted judgment for the department on behalf of the class, on the basis that 3M engaged in illegal sex discrimination. She also granted judgment for 3M for the period on and after January 1, 1975, on the basis that ERISA pre-empted the Minnesota Human Rights Act from applying to 3M's employee benefit plan after that date.

The department and 3M each filed a petition in Ramsey County District Court for judicial review pursuant to Minn. St. 15.0424 and 363.072. In an order issued May 25, 1978, the district court affirmed the conclusion that 3M engaged in illegal sex discrimination, reversed the hearing examiner's ruling that ERISA pre-empted the Minnesota Human Rights

[1] Minn. St. 363.06, subd. 1, provides: "Any person aggrieved by a violation of this chapter may file a verified charge with the commissioner or his designated agent * * *."

Act, and modified the class to consist of all present or former employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M at any time on or after September 2, 1976, to March 25, 1978, the date of the order. 3M and the department have each appealed to this court from the judgment entered in district court.

The 1977 version of the Minnesota Human Rights Act defines "sex" as follows:

> "'Sex' includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth." Minn. St. 363.01, subd. 29.

The 1977 version delineates various unfair discriminatory practices, including:

> "Except when based on a bona fide occupational qualification, it is an unfair employment practice:
>
> * * * *
>
> "(2) For an employer, because of * * * sex * * *,
>
> * * * *
>
> "(c) to discriminate against a person with respect to his hire, tenure, compensation, terms, * * * or privileges of employment.
>
> * * * *
>
> "(5) For an employer * * * with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work." Minn. St. 363.03, subd. 1 (2, 5).

3M's IMP obviously violates the current version of the Minnesota Human Rights Act. 3M argues, however, that its IMP

did not run afoul of the pre-1977 act. Prior to June 3, 1977, the effective date of the 1977 amendments, the Minnesota Human Rights Act prohibited discrimination in employment on the basis of sex, but did not specifically mention pregnancy and childbirth. Minn. St. 1976, § 363.03, subd. 1. 3M argues, therefore, that it was not discriminating on the basis of sex when it excluded pregnancy-related absences from its IMP prior to June 3, 1977. 3M contends that the 1969 Minnesota Legislature, which originally enacted the sex discrimination provision, adopted it from a similar provision in Title VII of the Civil Rights Act of 1964, 42 USCA § 2000e-2(a), and intended the same interpretation of sex discrimination as that given Title VII by the Equal Employment Opportunity Commission (EEOC). At that time, the EEOC had construed Title VII as not reaching the exclusion of pregnancy-related absences from income maintenance plans. 3M further contends the pregnancy exclusion is reasonable, exhibits no intent to harm women, and, in fact, has no adverse effect upon women.

We believe, however, as the department argues, that the 1977 amendments to the Minnesota Human Rights Act clarified rather than changed existing state law. The 1977 amendments were prefaced by the following description: "*An Act relating to human rights; clarifying the scope of sex discrimination* * * *." L. 1977, c. 408. The impetus for the 1977 amendments was the United States Supreme Court's decision in General Electric Co. v. Gilbert, 429 U. S. 125, 97 S. Ct. 104, 50 L. ed. 2d 343 (1976), which held by a 6 to 3 divided court that the exclusion of pregnancy-related disabilities from G.E.'s disability plan was not sex discrimination under Title VII. The sponsors of the 1977 amendments emphasized that the legislation was intended to merely clarify that the Minnesota sex

discrimination provision was not to have the same interpretation as Title VII after the Gilbert decision.[2] For instance, Representative Ann Wynia, immediately prior to the passage of the 1977 amendments bill, responded to a question on the House floor, as follows:

> "* * * We know the interpretation that has been given to the prohibition on the discrimination of sex in the Minnesota Human Rights Act but in light of this United States Supreme Court decision, let's just clarify the meaning consistently with the interpretation we have had in the past."

We note two additional factors which lead us to this conclusion. First, the origin of the original sex discrimination provision enacted in 1969 (L. 1969, c. 897) is unclear. Contrary to 3M's contention that Title VII was the model for our statute, at least one commentator has suggested that the Minnesota Human Rights Act owes its primary heritage to the Uniform Law Commissioners' Model Anti-Discrimination Act,[3] which the Minnesota Legislature "had before it" at the time it adopted the antidiscrimination laws, rather than Title VII. See, Auerbach, *The 1967 Amendments to the Minne-*

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[2] The Gilbert decision has been judicially disapproved by all but one state that has dealt with the exclusion-of-pregnancy-benefits issue subsequent to Gilbert, usually in a context which is virtually identical to the sex discrimination language in Title VII. See, Quaker Oats Co. v. Cedar Rapids Hum. R. Com'n, 268 N. W. 2d 862 (Iowa 1978); Mass. Elec. v. Mass. Com'n Against Discrim. —— Mass. ——, 375 N. E. 2d 1192 (1978); Castellano v. Linden Board of Education, 158 N. J. Super. 350, 386 A. 2d 396 (1978); Gas Co. v. Appeal Board, 41 N. Y. 2d 84, 359 N. E. 2d 393 (1976); Anderson v. U. Bucks Co. A. Vo. T. Sch. 30 Pa. Comwlth. 103, 373 A. 2d 126 (1977); Goodyear Tire & Rubber v. Dept. of Industry, 87 Wis. 2d 56, 273 N. W. 2d 786 (1978). Contra, Narragansett Elec. v. R. I. Com'n for Hum. R. —— R. I. ——, 374 A. 2d 1022 (1977).

[3] National Conference of Commissioners on Uniform State Laws, Uniform Law Commissioners' Model Anti-Discrimination Act (1966).

sota State Act Against Discrimination and the Uniform Law Commissioners' Model Anti-Discrimination Act: A Comparative Analysis and Evaluation, 52 Minn. L. Rev. 231, 232, 245. See, also, Auerbach, *The 1969 Amendments to the Minnesota State Act Against Discrimination and the Uniform Law Commissioners' Model Anti-Discrimination Act: A Comparative Analysis and Evaluation*, 55 Minn. L. Rev. 259, 260.

Second, it is quite likely that the legislature which enacted the original sex discrimination provision in 1969 did not have in mind a particular application of the provision but instead contemplated that the department would interpret the provision as circumstances arose. The department appears to have consistently treated pregnancy classifications as sex based and has held prior to the 1977 amendments that discrimination on the basis of pregnancy is sex discrimination.[4] On March 23, 1971, a hearing examiner of the department concluded that a county welfare board violated the Minnesota Human Rights Act by terminating a female employee when she took an unauthorized leave of absence for maternity purposes. State v. Crow Wing County Welfare Board, 3 Empl. Pract. Guide (CCH) ¶ 24,399.15. This interpretation by the agency charged with enforcing the statute is, of course, entitled to great weight. See, Steere v. State, Dept. of Public Welfare, 308 Minn. 390, 243 N. W. 2d 112 (1976). We hold that the legislature in adopting the 1977 amendments did not intend to alter the scope of sex discrimination under the Minnesota Human Rights Act. See, e. g., Brotherhood of Ry. & Steamship Clerks, etc. v. State, 303 Minn. 178, 229 N. W. 2d 3 (1975).

[4] This factor distinguishes this case from General Electric Co. v. Gilbert, 429 U. S. 125, 97 S. Ct. 104, 50 L. ed. 2d 343 (1976), where the majority placed great weight on the fact that the EEOC's position conflicted with its earlier pronouncements.

The 3M IMP was initiated for the purpose of compensating all disabled salaried employees during the period of disability. By denying coverage to pregnancy-related disabilities, 3M is not fulfilling the purported purpose of the plan. 3M's plan covers voluntary cosmetic surgery and injuries resulting from voluntary participation in sports, but does not cover unforeseen and involuntary complications of pregnancy, such as ectopic (tubal) pregnancy, toxemia, or miscarriage, or, for that matter, unplanned pregnancies. It seems clear that 3M's plan reflects traditional sexual role stereotypes. Women in their childbearing years are viewed merely as temporary members of the labor force who, as such, do not need income security, since they are most probably supplementing their husbands' incomes and will eventually quit their jobs to become mothers. Since insuring for pregnancy disabilities increases the cost of the plan, pregnancy coverage is simply deleted. If women are to be treated equally, such plans must be designed to insure identical security for women and for men from medical disabilities which may interrupt their income flow. Since only women face the risk of becoming pregnant, excluding only pregnancy-related disabilities from an otherwise comprehensive income maintenance plan is per se sex discrimination. A woman should be no more burdened than a man if she chooses to combine the roles of parent and employee, simply because the woman must bear the child.

3M argues that ERISA pre-empts application of the Minnesota Human Rights Act after January 1, 1975, the effective date of ERISA's pre-emption provision, because Congress unmistakably ordained pre-emption. See, Florida Avocado Growers v. Paul, 373 U. S. 132, 83 S. Ct. 1210, 10 L. ed. 2d 248 (1963). 29 USCA, § 1144(a), of ERISA provides in part:

"* * * [T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan * * *."

If "relate" is read broadly, any state law, with minor exceptions not here relevant, which in any way impinges on an employee benefit plan would be pre-empted, including state antidiscrimination laws. 29 USCA, § 1144(d), of ERISA provides, however, that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States * * * or any rule or regulation issued under any such law." The department argues, and the district court held, that this provision preserves intact Title VII of the Civil Rights Act of 1964, 42 USCA, §§ 2000e to 2000e-17, and that Title VII, in turn, expressly preserves state antidiscrimination laws. We agree.

42 USCA, § 2000e-7, provides:

"Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter."

42 USCA, § 2000h-4, provides:

"Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision

is inconsistent with any of the purposes of this Act, or any provision thereof."

The majority of the cases brought to our attention where other courts have faced the pre-emption issue hold that state antidiscrimination laws are not pre-empted by ERISA. Bucyrus-Erie Co. v. Dept. of Industry, Etc. 453 F. Supp. 75 (E.D. Wis. 1978), affirmed —— F. 2d —— (7 Cir. 1979); Gast v. State, 36 Ore. App. 441, 585 P. 2d 12 (1978); Goodyear Tire & Rubber Co. v. Dept. of Industry, 87 Wis. 2d 56, 273 N. W. 2d 786 (1978). Contra, Perval Industries Inc. v. State, —— F. Supp. —— (D. Conn. 1978), affirmed —— F. 2d —— (2 Cir. 1979). We adopt the majority position and hold that Congress, in adopting ERISA, did not intend to pre-empt the operation of state antidiscrimination laws such as the Minnesota Human Rights Act. To hold otherwise would ignore the important role that Congress preserved for state antidiscrimination laws under Title VII. For example, Title VII prohibits an employer from discriminating on the basis of race only if that employer has 15 or more employees. 42 USCA, § 2000e(b). Only state legislation prohibits racial discrimination by employers of fewer than 15 employees. We cannot believe that Congress intended to create a regulatory void where discrimination by such employers could not be prohibited by the states any time ERISA is involved. Title VII relies on state antidiscrimination laws as a part of its statutory scheme, and ERISA, which expressly preserves federal statutes such as Title VII, impliedly preserves state laws which are integrally related to such federal statutes. Given the congressional policy favoring state antidiscrimination statutes, we will not presume pre-emption by an unrelated statute absent a clear expression that Congress specifically intended pre-emption of state antidiscrimination laws.

The district court ruled that the class in this case ought to include claims back to September 2, 1976. The ruling was based upon our decision in Richardson v. School Board of Ind. Dist. No. 271, 297 Minn. 91, 98, 210 N. W. 2d 911, 916 (1973), that "only those persons whose rights had been affected by the discriminatory practices within 6 months prior to [the date of the commissioner's complaint] may be properly included in the class action." September 2, 1976, was 6 months prior to the date of the commissioner's complaint in this case.[5] We hold that Richardson is controlling here and that the district court correctly defined the class of plaintiffs represented by the department.

The department attempts to distinguish Richardson to support the holding of the hearing examiner that the class ought to include persons with claims back to August 6, 1973, the date 6 months prior to Troye's charge. The original administrative charge which preceded the commissioner's complaint in Richardson did not include the words "and others similarly situated," whereas Troye's charge did. The department, therefore, argues that 3M had notice that a class action was involved, rather than merely an individual charge of discrimination. Our decision in Richardson, however, holds that the time limitation provision of the Minnesota Human Rights Act is jurisdictional and not merely for the purpose of giving notice. A person has no statutory basis for bringing a lawsuit raising claims under the Human Rights Act unless he has filed a charge as to those claims within 6 months of the date he was last personally affected by the practice complained

[5] Minn. St. 363.06, subd. 3, provides: "A charge of an unfair discriminatory practice must be filed within six months after the occurrence of the practice."

of. §§ 363.06, subd. 3, and 363.14. When the commissioner's power to institute litigation has ripened through the processing of the required charge, then the law recognizes an exception to the general rule and permits the commissioner to sue not only on behalf of the charging party but also on behalf of others whose rights to file their own charges have not expired.

The district court apparently inadvertently excluded Judith Troye, the individual who originally filed the charge of discrimination in 1974, when it modified the class of plaintiffs entitled to judgment to consist of "all present or former female salaried employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M at any time on or after September 2, 1976 to date." Troye, of course, is entitled to judgment. She cannot be prejudiced by the state's delay in filing the complaint.

The judgment of the district court is affirmed, except that the case is remanded to the district court with directions to enter judgment for the Department of Human Rights on behalf of Troye, whereupon the case is remanded to the hearing examiner for a determination of the members of the class and the amount of damages.

Affirmed as modified and remanded.

MR. JUSTICE OTIS and MR. JUSTICE TODD took no part in the consideration or decision of this case.

APPENDIX D

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

FILE NO. 422929
FILE NO. 423034

MINNESOTA MINING AND MANUFACTURING COMPANY,

Petitioner,

vs.

STATE OF MINNESOTA by WILLIAM L. WILSON, DEPARTMENT OF HUMAN RIGHTS,

Respondent.

IN THE MATTER OF AN APPEAL BY THE STATE OF MINNESOTA BY WILLIAM L. WILSON, COMMISSIONER, DEPARTMENT OF HUMAN RIGHTS, FROM A DECISION OF A HEARING EXAMINER.

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER FOR JUDGMENT

The above entitled matter includes two Petitions for Judicial Review as follows:

1. Petition by the State of Minnesota by William L. Wilson, Commissioner, Department of Human Rights (hereafter "Department").

2. Petition by Minnesota Mining and Manufacturing Company (hereafter "3M").

These Petitions are appeals to this Court from an Order for Summary Judgment made September 16, 1977 by Ellen Lavin, Hearing Examiner in this matter. This Order for Summary Judgment was a final decision of the Department of Human Rights pursuant to Minn. Stat. § 363.071, Subd. 2. The petitions for Judicial Review were made pursuant to Minn. Stat. 363.072, Minn. Stat. § 15.0424 and Minn. Stat. 15.0425.

These Petitions came on for hearing before the undersigned pursuant to motions of the respective petitioners for an order of this Court modifying the said final decision of the Hearing Examiner.

This matter was argued to the Court at 9:45 o'clock a.m. on Thursday, February 2, 1978 at the Ramsey County Courthouse in the City of Saint Paul.

The Department appeared by its Attorney General, Warren Spannaus, its Solicitor General, Richard B. Allyn, Special Assistant Attorney General, Erica Jacobson, and, in court, Special Assistant Attorney General, Mark Levinger. "3M" appeared by its counsel, Oppenheimer, Wolff, Foster, Shepard and Donnelly, in court, Thomas P. Kane, Keith E. Goodwin and Robert R. Reinhart, Jr. Each party appeared in support of its own motion and in opposition to the motion of the other party.

During the proceeding before the Hearing Examiner in the Department of Human Rights, the Department and 3M each moved for Summary Judgment in its favor. The Hearing Examiner found there was no genuine issue as to any material fact on the issue of liability and that each party was entitled to partial summary judgment as a matter of law. The Hearing Examiner issued her decision in the form of an Order for Summary Judgment and Memorandum on September 16, 1977. This order provides:

"1. This case is certified as a class action on behalf of all present or former female salaried employees of Respondent (3M) in Minnesota who were on a pregnancy leave of absence from a salaried position at Respondent at any time between August 6, 1973 and December 31, 1974.

2. Judgment for the Complainant (Department) is awarded on behalf of the above stated class on the issue of liability, based upon the fact that exclusion of maternity absence from Respondent's IMP for salaried persons in Minnesota for the stated period constitutes sex discrimination under Minn. Stat. § 363. See attached Memorandum.

3. Judgment for the Respondent in the issue of liability shall be granted for the period of January 1, 1975 to date based upon the fact that ERISA preempts Minn. Stat. § 363 from regulating Respondent's IMP. See attached Memorandum.

4. A hearing shall be held forthwith, at a time and place to be determined, regarding the issue of damages."

The Department, in its Petition for Judicial Review, claims:

"The decision of the Hearing Examiner is affected by error of law, arbitrary and capricious, in so far as it concludes that ERISA preempts Minn. Stat. § 363.03 (1976) from applying to Minnesota Mining & Manufacturing Co's income maintenance plan, grants judgment for Minnesota Mining & Manufacturing Co. on the issue of liability for the period of January 1, 1975 to the present, and limits the class certified to employees of Minnesota Mining & Manufacturing Co. who were on a pregnancy leave of absence between August 6, 1973 and December 31, 1974. In all other respects, the decision is lawful and proper."

The Department, by its Petition, seeks relief as follows:

"Petitioner respectfully request that this Court modify the decision of the Hearing Examiner so as to conclude that ERISA does not preempt Minn. Stat. § 363.03 (1976) from applying to Minnesota Mining & Manufacturing Co.'s income maintenance plan, certify the case as a class action on behalf of present and former salaried employees of Minnesota Mining & Manufacturing Co. in Minnesota who have been on a pregnancy leave of absence on or after August 6, 1973, and grant judgment for the State of Minnesota on the issue of liability for the period of August 6, 1973 to date."

3M, in its Petition for Judicial Relief, claims:

"The Hearing Examiner erred in her conclusions set forth in paragraphs 1, 2 and 4 of the Order for Summary Judgment and Memorandum insofar as the Order concludes that 3M's IMP constitutes sex discrimination under Minn. Stat. § 363.01 *et seq.* and that class relief and damage hearings are appropriate. Paragraphs 1, 2 and 4 of her Order for Summary Judgment and Memorandum should be reversed because they are:

a. An incorrect construction of Minn. Stat. § 363.01 *et seq.* and in excess of the statutory authority or jurisdiction of the agency;

b. Unsupported by substantial evidence in view of the entire record as submitted; and

c. Arbitrary and capricious."

3M, by its Petition seeks relief as follows:

"Petitioner requests that the Court review, reverse and set aside paragraphs 1, 2 and 4 of the Order for Summary Judgment and Memorandum pursuant to the provisions of Minn. Stat. §§ 363.072 and 15.0424, that the Court stay

enforcement of those paragraphs of the Order of the Hearing Examiner until final determination of the petition by this Court, that the Court grant summary judgment in petitioner's favor on the ground that its IMP plan excluding pregnancy absences from coverage for its Minnesota salaried females does not constitute sex discrimination in violation of Minn. Stat. § 363.01 *et seq.*, and that petitioner be awarded its costs and disbursements herein."

The matter was submitted to the Court upon the respective Petitions for Judicial Review and the motions of the parties for an Order of this Court modifying the Hearing Examiner's decision, the arguments and legal memoranda of counsel, the record of proceedings before the Hearing Examiner, and all the files, records, and proceedings herein.

The Court has reviewed and carefully considered all of the foregoing and now makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Commissioner of the Minnesota Department of Human Rights is charged with the duty and responsibility to administer and enforce the provisions of the Minnesota Human Rights Act, Minn. Stat. § 363.01 et seq., in a manner which will effectuate the policy and purposes of the Act.

2. Ellen Lavin was a Hearing Examiner duly appointed pursuant to Minn. Stat. § 363.05, Subd. 1 (18), Minn. Stat. § 363.071 and Minn. Stat. § 15.052.

3. Minnesota Mining and Manufacturing Company (3M) is an employer within the definition of Minn. Stat. § 363.01, Subd. 15.

4. 3M maintains an employee benefit plan (hereafter "Plan") which provides income maintenance benefits to its

salaried employees temporarily disabled by non-work related personal illness or injury.

5. Disabilities resulting from pregnancy, childbirth, and related medical conditions or occurrences are excluded from the Plan.

6. On or about October 12, 1973, Judith Troye (hereafter "charging person"), an employee of 3M in Minnesota became disabled because of pregnancy. She did not receive any income maintenance benefits under the Plan because her disability resulted from her pregnancy.

7. On February 6, 1974, the charging person filed a charge of sex discrimination with the Department. Photocopy of her charge is incorporated herein and attached hereto as Exhibit A.

8. After the charge of sex discrimination was filed, the Commissioner made an inquiry into the truth of the allegations of the charge. This inquiry was made pursuant to Minn. Stat. § 363.06, Subd. 4. This statute also requires that the Commissioner make a determination as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices. The Commissioner made a determination that probable cause did exist to credit the allegation that 3M had committed an unfair discriminatory practice. On May 10, 1974, by letter, the Commissioner so advised 3M. A photocopy of this letter is incorporated herein and attached hereto as Exhibit B.

9. It appears from the record of the proceedings before the Hearing Examiner that the next letter after the letter dated May 10, 1974, was written by the Commissioner to 3M on March 2, 1976. It indicates that 3M had some contact with the Department regarding conciliation of the unfair sex discrimination. Minn. Stat. § 363.06, Subd. 5 provides in pertinent part:

"The Commissioner . . . shall endeavor to eliminate the unfair discriminatory practice through education, conference, conciliation and persuasion . . ."

The efforts of the Commissioner in complying with this mandate were unsuccessful. A photocopy of the March 2, 1976 letter is incorporated herein and attached hereto as Exhibit C.

10. On March 2, 1977, and more than three years after the charge of sex discrimination was filed, the Commissioner executed and issued his complaint against 3M. This Complaint was served on 3M on March 2, 1977. This Complaint was issued pursuant to Minn. Stat. § 363.06, Subd. 4(2).

11. The Commissioner issued his Complaint on behalf of the charging person and on behalf of all females subject to the Plan who are now or have been employed in Minnesota by 3M on or after August 6, 1973 or who became employed in Minnesota during the pendency of this case.

12. The Act authorizes a Hearing Examiner, upon concluding that an employer has engaged in an unfair discriminatory practice, to issue an order directing the party committing the unfair discriminatory practice to cease and desist from such violation and to take such affirmative action, including the payment of compensatory and punitive damages as in the judgment of the Hearing Examiner will effectuate the purposes of the Act.

13. The Hearing Examiner determined that the case be maintained as a class action and certified it as a class action on behalf of all present or former female salaried employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M during a stated period of time.

14. The Hearing Examiner concluded and found that 3M, by denial of income maintenance benefits under its Plan, to

salaried female employees of 3M in Minnesota who were on pregnancy or maternity leave of absence from a salaried position, constituted sex discrimination in violation of Minn. Stat. 363.03, Subd. 1(2)(c).

15. The Hearing Examiner ordered that the Department be awarded judgment on behalf of the members of the above described class on the issue of liability and further ordered that a hearing be held, regarding the issue of damages, at a time and place to be determined.

16. The Hearing Examiner concluded and found that for the period commencing January 1, 1975 to date the federal Employee Retirement Income Security Act of 1974 (ERISA) preempts Minn. Stat. § 363.01 et seq. from regulating 3M's Plan.

17. The Hearing Examiner ordered that the stated period of time for which claims of the members of the class be awarded judgment was the period commencing August 6, 1973, a date six months prior to the filing of the charge on February 6, 1974 and December 31, 1974. The Hearing Examiner found that effective January 1, 1975 that ERISA preempts Minn. Stat. § 363.01 et seq. from regulating 3M's Plan.

CONCLUSIONS OF LAW

1. As found by the Hearing Examiner, the exclusion by 3M of income maintenance benefits under its Plan to its salaried female employees in Minnesota who were temporarily disabled as a result of pregnancy, child birth and related medical conditions or occurrences constituted sex discrimination in violation of Minn. Stat. 363.03, Subd. 1(2)(c).

2. The decision of the Hearing Examiner that:

"This case is certified as a class action on behalf of all present or former salaried employees of Respondent (3M) in Minnesota who were on a pregnancy leave of absence

from a salaried position at Respondent at any time between August 6, 1973 and December 31, 1974."

is affected by error of law only with respect to the period of time stated.

3. The decision of the Hearing Examiner awarding judgment to the Department on the issue of liability on behalf of the class stated by the Hearing Examiner is affected by error of law only with respect to the period of time stated.

4. The decision of the Hearing Examiner that:

"Judgment for the Respondent (3M) in the issue of liability shall be granted for the period of January 1, 1975 to date based upon the fact that ERISA preempts Minn. Stat. § 363 from regulating Respondent's IMP."

is affected by error of law.

5. Minn. Stat. 363.01 et seq. as it applies to 3M's Plan is not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA).

6. That the Department is entitled to judgment on the issue of liability on behalf of the above described class only for the period of time commencing September 2, 1976 to date.

7. The decision of the Hearing Examiner is not in excess of the statutory authority or jurisdiction of the Department of Human Rights.

8. The decision of the Hearing Examiner is not unsupported by substantial evidence in view of the entire record as submitted.

9. The decision of the Hearing Examiner is not arbitrary or capricious.

10. Except as noted in paragraphs 2, 3 and 4 of these Conclusions, the decision of the Hearing Examiner is not affected by error of law.

11. The substantial rights of 3M have been prejudiced because the administrative decision of the Hearing Examiner is affected by error of law with respect to period of time stated in her Order for Summary Judgment.

12. The substantial rights of the Department of Human Rights have been prejudiced because the administrative decision of the Hearing Examiner is affected by error of law with respect to the federal Employee Retirement Income Security Act of 1974 (ERISA) preempting Minn. Stat. 363.01 et seq. from regulating 3M's Plan.

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. That the decision of the Hearing Examiner finding that the exclusion by 3M of income maintenance benefits under its Plan to its salaried female employees in Minnesota who were temporarily disabled as a result of pregnancy, child birth and related medical conditions or occurrences constituted sex discrimination in violation of Minn. Stat. 363.03, Subd. 1(2)(c) is affirmed.

2. That the decision of the Hearing Examiner made at paragraph 1. of her Order for Summary Judgment is modified to provide:

"1. This case is certified as a class action on behalf of all present or former female salaried employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M at any time on or after September 2, 1976 to date."

and this said decision is affirmed as modified.

3. The decision of the Hearing Examiner made at paragraph 2. of her Order for Summary Judgment is modified to provide:

"2. Judgment for the State of Minnesota by William L. Wilson, Commissioner, Department of Human Rights, is awarded on behalf of all present and former female salaried employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M at any time on or after September 2, 1976 to date on the issue of liability, based upon the fact that exclusion of maternity absences from 3M's Plan for salaried persons in Minnesota for the stated period constitutes sex discrimination under Minn. Stat. 363.03, Subd. 1(2)(c)."

and this said decision is affirmed as modified.

4. The decision of the Hearing Examiner made at paragraph 3. of her Order for Summary Judgment ordering judgment for 3M on the issue of liability for the period of January 1, 1975 to date based upon the assumption that the federal Employees Retirement Income Security Act of 1974 (ERISA) preempts Minn. Stat. 363 is reversed.

5. That this case be remanded to the Hearing Examiner, Department of Human Rights, for further proceedings in conformity with the foregoing Findings of Fact, Conclusions of Law and Order including a determination of the members of the class described in paragraph 2. of this Order and for the hearing referred to in paragraph 4. of the Hearing Examiner's Order for Summary Judgment.

It is not a part of this Order but the parties are encouraged to endeavor to eliminate the unfair sex discrimination found above as provided in Minn. Stat. 363.06, Subd. 5.

The attached memorandum is made a part of these Findings of Fact, Conclusions of Law and Order.

JAMES M. LYNCH
Judge of District Court

Dated: This 25th day of May, 1978.

Charge of Discrimination: Any person claiming to have been discriminated against because of race, color, creed, religion, national origin, sex, marital status, disability or public assistance as provided in Chapter 363 of the Minnesota Statutes in the areas of employment, real property, public accommodations, public services or education may file this form within six (6) months after the alleged discriminatory act with the Minnesota Department of Human Rights, Capitol Square Building, Room 200, St. Paul, Minnesota 55101. Please type or print.

Case Number: EEOC: TMK4 - 354
L1660-ES5-2

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FILED
FEB 6 1974
STATE OF MINNESOTA
Department of Human Rights

Have you filed this charge with any federal or local agency? ☒ Yes ☐ No
If yes, name agency and date.
EQUAL EMPLOYMENT OPPORTUNITIES Comm.

2. Do you also wish to have this charge filed with the Equal Employment Opportunity Commission? (Employment Discrimination Only)
☐ Yes ☐ No

3. Your name, address, zip code, and phone number:
JUDITH A. TROYE & others similarly situated
471 CENTENNIAL DR.
ROSEVILLE, MN. 55113
(612) 484-7378

4. Name the person(s) (indicate job title, organization, address, and phone number) who discriminated against you.
[redacted] MR W.L. PIKE, DIRECTOR Personnel Se
3M COMPANY
3M CENTER
ST. PAUL, MN. 55101
(612) 733-2447
MINNESOTA MINING & MFG. CO.

5. Was the discrimination because of: (Please check one)
☐ Race ☐ Color ☐ Creed ☐ Religion ☐ National Origin
☒ Sex ☐ Marital Status ☐ Disability ☐ Public Assistance

6. In what area did the discrimination occur? (Please check one)
☒ SICK LEAVE Employment ☐ Real Property ☐ Public Accommodations
☐ Public Services ☐ Education

7. Set forth in statutory language the violation of Minnesota Statutes Section 363.03 – a brief statement setting forth the discriminatory act. (You may submit a detailed separate statement setting forth all the particulars.)

ACCORDING TO EEOC GUIDELINES A WOMAN OFF WORK DUE TO PREGNANCY IS ENTITLED TO PAY FOR ACRUED SICK LEAVE FOR THE TIME OF HER ACTUAL CONFINEMENT. ANY COMPENSATION FOR THIS TIME HAS BEEN DENIED ME AND AS I UNDERSTAND, ALL FEMALE EMPLOYEES IN THIS SITUATION AS STANDARD 3M POLICY.

Exhibit A

Subscribed and sworn to before me this 30th day of January 1974
[illegible]
Notary Public

I swear or affirm that I have read this charge and that it is true to the best of my knowledge, information, and belief.
Judith A. Troye 1-30-74
(Sign your name) (Date)

EXHIBIT B
STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS
200 Capital Square Building
Saint Paul, Minnesota 55101
(612) 296-5663

May 10, 1974

Re: E1660-ES5-2
EEOC: TMK4-0354

Mr. W. L. Pike
Director of Personnel Services
Minnesota Mining & Manufacturing Company
3M Center
St. Paul, Minnesota 55101
Dear Mr. Pike:

The state Department of Human Rights has completed an investigation of the charge that was filed against you by Ms. Judith A. Troye on February 6, 1974.

A determination has been made that probable cause exists to credit the allegation that you have committed an unfair discriminatory practice.

The law requires that the Commissioner of Human Rights issue a complaint directing you to appear at a public hearing to answer these allegations. This complaint will be issued 60 days from your receipt of this letter.

In the interim, the department extends an invitation to participate in a conciliation conference. In this way, it may be possible to settle this matter without resorting to a public hearing.

If you with to participate in such a meeting, please contact Mr. V. J. Michaelson, Jr. of this office and arrange for a suitable date and time.

Sincerely,
SAMUEL L. RICHARDSON
Commissioner

SLR/tml
Certified/Return
Receipt Requested
cc: Ms. Judith A. Troye.

EXHIBIT C

March 2, 1976

Re: E1660-ES5-2
EEOC:TMK4-0354

Mr. W. L. Pike,
Director of Personnel Services
Minnesota Mining & Manufacturing Company.
3M Center
St. Paul, Minnesota 55101
Dear Mr. Pike:

This letter informs you that more than sixty (60) days have elapsed since the Department notified you that a probable cause finding had been determined in the above-noted case. You were requested to contact the Department during the sixty (60) day period and arrange for a suitable conciliation if you so desired. While our records do show some contact with the Department regarding conciliation, they do not show that a satisfactory conciliation has been reached or that the issues of the charge against you has been resolved.

Since we have no record of a conciliation agreement or resolution of the charge thus far, the Department has referred this case to the Attorney General's Office for action, according to

procedures set forth by Minnesota Statutes 363.071 Hearings. Subdivision 1. This procedure consists of a public hearing for the purpose of litigating this charge and will take place as soon as possible, at which time you will be properly notified.

Should you have any question or wish to comment on the disposition of this case, please promptly contact Mr. Thomas J. Donaldson, Director of Conciliation, at 296-5667.

Respectfully,
WILLIAM L. WILSON
Commissioner

WLW/tmt

MEMORANDUM

1. Scope of the Class Action

The right of the commissioner to issue a complaint on behalf of a class of persons affected by discriminatory practice is established. *Richardson v. School Board of Ind. Dist. No. 271,* 297 Minn. 91, 210 N.W. 2d 911 (1973).

This case is certified as a class action on behalf of all present or former female salaried employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M at any time on or after September 2, 1976 to date.

The issue here is whether or not the period of time stated is a proper limitation on the scope of the class.

This issue necessarily involves an interpretation of the effect of Minn. Stat. 363.06, Subd. 3, which provides:

> "A charge of an unfair discriminatory practice must be filed within six months after the occurrence of the practice."

The commissioner is charged with various duties including the duty to issue complaints and formulate policies to effectuate the purposes of the Human Rights Act. Minn. Stat.

363.05, Subd. 1. In the performance of his duties and the exercise of his powers the commissioner must use his judgment and discretion. Here, for example, the commissioner did not issue the complaint until there had been conciliation efforts pursuant to Minn. Stat. 363.06, Subd. 5.

Litigation by the Department must of necessity, to some extent, be under the control of the commissioner. The determination of whether to issue a complaint on behalf of the individual charging person or as a class action must rest in the sound discretion of the commissioner. This is true because in making the determination of when to issue the complaint, what specific relief to seek and whether to bring the action on behalf of an individual or on behalf of a class, the commissioner must take into consideration, among other things, the following:

1. The nature of charge filed by the charging person.
2. The information obtained by the commissioner by his inquiry into the charge pursuant to Minn. Stat. 363.06, Subd. 4.
3. The degree of success of the commissioner's attempts to eliminate the unfair practices pursuant to Minn. Stat. 363.06, Subd. 5.
4. The number of persons affected by the unfair discrimination.
5. His duty to formulate policies to effectuate the purposes of the Human Rights Act pursuant to Minn. Stat. 363.05, Subd. 1

For these reasons, when the commissioner issues a complaint pursuant to Minn. Stat. 363.06, Subd. 4(2) and Minn. Stat. 363.06, Subd. 1, he should not be compelled to issue the particular kind of complaint (or seek the particular form of relief) desired by the charging person.

Other than the charging person, the persons included in the class action in this case had not filed a charge of discrimination with the commissioner pursuant to Minn. Stat. 363.06, Subd. 1 at the time he issued his complaint on March 2, 1977.

As stated in *Richardson*:

> "The commissioner here seeks to bring a class action for all persons properly included in the class affected by the discriminatory practice. The commissioner's right can be no broader than the rights of the members of the class he represents. Since his complaint was not issued until July 13, 1972, only those persons whose rights had been affected by the discrimination practices within 6 months prior to July 13, 1972, may be properly included in the class action."

Here, therefore, only those present or former female salaried employees of 3M in Minnesota who were on a pregnancy leave of absence from a salaried position at 3M at any time on or after September 2, 1976 to date may be properly included in the class action.

2. Preemption Issue

In her order, the Hearing Examiner concluded that Section 514(a) of ERISA, 29 U.S.C. § 1144(a), preempts the application of Minn. Stat. § 363 from regulating Respondent's Plan. That section provides in relevant part as follows:

> ". . . this chapter shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title . . ."

There is a division among jurisdictions as to whether this federal statute preempts State Human Rights Acts from application in this field. Compare *Time Insurance Company v. De-*

partment of Industry, Labor and Human Relations, No. 154-423 (Wisc. Cir. Ct., Dane County, filed Jan. 3, 1978), *Goodyear Tire & Rubber Co. v. Department of Industry, Labor and Human Relations,* No. 155-058 (Wisc. Cir. Ct., Dane County, filed February 7, 1978) and *Lukus v. Westinghouse Electric Corp.,* No. GD 77-14803 (Pa. Ct. of Com. Pleas, Allegheny County, filed April 20, 1978) with *Gast v. State of Oregon, by and through Bill Stevenson, Commissioner of the Bureau of Labor,* No. A7710-14092E (Ore. Cir. Ct., Multnomah County, filed November 29, 1977).

The United States Supreme Court in *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142 (1963), stated that federal preemption exists where "the nature of the regulated subject matter permits no other conclusion, or Congress has unmistakenly ordained."

The substantive provisions of ERISA which relate to employee welfare benefit plans are the reporting and disclosure provisions of 29 U.S.C. §§ 1021-31 and the fiduciary responsibility provisions of 29 U.S.C. §§ 1101-14. In *Insurer's Action Council, Inc. v. Heaton,* 423 F. Supp. 921, 926 (D. Minn. 1976), Judge Devitt stated that the requirements of ERISA have nothing to do with the substance of the insurance plans which employers must offer their employees. Thus, by analogy, there is no conflict apparent between the federal regulatory scheme under ERISA and the state's enforcement of its anti-discrimination laws.

Nor is it apparent that Congress has "unmistakenly ordained" that ERISA is to supersede state anti-discrimination laws. The language of 29 U.S.C. § 1144(a), is ". . . as . . . may . . . relate to any employee benefit plan . . ." does not apply to the Minnesota Human Rights Act. Minn. Stat. 363.03 subd. 1(2) is not a state law dealing with some par-

ticular aspect of private employee benefit plans, but is a statute broad in scope grounded on the state's police power to prevent employers from engaging in discriminatory practices. See Minn. Stat. § 363.12. See also *Time Ins. Co. v. DILHR*, supra, slip. op. at 11.

The sex discrimination prohibitions of Minn. Stat. § 363.03 Subd. 1(2) are merely of peripheral concern to the operation of ERISA. They do not impinge on federal regulation of employee welfare benefit plans. Consequently, the Hearing Examiner erred as a matter of law in concluding that ERISA has preempted the operation of Minn. Stat. 363.03 subd. 1(2) since January 1, 1975.

LYNCH, J.

APPENDIX E

(Caption)

ORDER FOR SUMMARY JUDGMENT AND MEMORANDUM

The above-entitled matter came on for hearing on a Motion for Summary Judgment before Ellen Lavin, duly appointed as Hearing Examiner in this matter. The hearing was held on August 19, 1977, in the City of Saint Paul, County of Ramsey, State of Minnesota.

Erica Jacobson, Special Assistant Attorney General, appeared on behalf of the Department of Human Rights. Thomas P. Kane, Esq., Oppenheimer, Wolff, Foster, Shepard & Donnelly, appeared on behalf of the Respondent.

Final briefs were received by August 26, 1977.

Notice is hereby given that, pursuant to Minn. Stat. § 363.071, subd. 2, this is a final decision of the Department of Human Rights, and under Minn. Stat. § 363.072, any person

aggrieved hereby may seek judicial review pursuant to Minn. Stat. § 15.0424 and Minn. Stat. § 15.0425.

Based upon all the exhibits, testimony and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. This case is certified as a class action on behalf of all present or former female salaried employees of Respondent in Minnesota who were on a pregnancy leave of absence from a salaried position at Respondent at any time between August 6, 1973 and December 31, 1974.

2. Judgment for the Complainant is awarded on behalf of the above-stated class on the issue of liability, based upon the fact that exclusion of maternity absences from Respondent's IMP for salaried persons in Minnesota for the stated period constitutes sex discrimination under Minn. Stat. § 363. See attached Memorandum.

3. Judgment for the Respondent on the issue of liability shall be granted for the period of January 1, 1975 to date based upon the fact that ERISA preempts Minn. Stat. § 363 from regulating Respondent's IMP. See attached Memorandum.

4. A hearing shall be held forthwith, at a time and place to be determined, regarding the issue of damages.

Dated: September 16, 1977.

ELLEN LAVIN
Hearing Examiner

MEMORANDUM

The Commissioner of Human Rights instituted the present action against the Respondent, alleging that the Respondent's Income Maintenance Plan (hereinafter called "IMP") discriminates against Respondent's salaried female employees employed in Minnesota on the basis of sex because it excludes

disabilities resulting from pregnancy, child birth and related medical conditions or occurrences. The Plan pays monetary benefits to salaried employees absent from work due to personal illness or injury.

The Complaint was issued following the investigation of a charge brought by one Judith Troye. Ms. Troye signed her charge on February 6, 1974. Her charge was based upon the alleged discriminatory event occurring on August 6, 1973. This matter has been conditionally certified as a class action on behalf of all present or former female salaried employees of the Respondent in Minnesota who had been on pregnancy leave of absence from a salaried position at the Respondent on or after August 6, 1973, or who began a pregnancy leave of absence from a salaried position at the Respondent during the pendancy of this case. The parties have stipulated that there are no questions of fact at issue. Both parties have moved for Summary Judgment.

At the date in question, August 6, 1973, the relevant state law was as follows:

> Subdivision 1. Employment. Except when based on a bona fide occupational qualification, it is an unfair employment practice:
>
> . . . (2) for an employer, because of . . . sex . . .
>
> (c) to discriminate against a person with respect to his hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment; . . ."
>
> Minn. Stat. § 363.03 (1969)

This law was in effect until Minn. Laws 1977, Ch. 408, became effective on June 3, 1977. That law amends Minn. Stat. § 363 (1969), by adding the following definition:

> Subdivision 28. Sex. "Sex" includes, but is not limited to, pregnancy, child birth, and disabilities related to pregnancy and child birth."

The decisions under the Minnesota Human Rights Act prior to the enactment of Minn. Laws 1977, Ch. 408, have held that pregnancy is sex based, and that distinction based on pregnancy is sex discrimination. See, e.g., *Myers & Schmidt, Inc. v. State by Wilson*, Hennepin County District Court, File No. 724572 (October 29, 1976); *State v. Crow Wing County Welfare Board*, CCH ¶ 24,399.15, Hearing Examiner Decision (March 23, 1971).

The legislative history of Minn. Laws 1977, Ch. 408, confirms the fact that this was the position taken by the Minnesota Human Rights Department in interpreting the then-existing statute. During the debate on the floor of the Minnesota House of Representatives on May 3, 1977, the amendment in the statute was stated as follows:

> Mrs. Wynia:
>
> . . . Section 1 of the bill amends Section 363.01 by adding an additional definition to that section which clarifies the meaning of sex as used in that chapter. The clarification states that, sex includes but is not limited to pregnancy, child birth, and disabilities related to pregnancy or child birth. This clarification is prompted by a United States Supreme Court decision last December case *GE v. Gilbert*. In that case the United States Supreme Court stated that, an exclusion of pregnancy from a disability benefits plan providing general coverage is not a gender based discrimination at all. Essentially, the Court did in its ruling was to say that, to discriminate on the basis of pregnancy is not sex discrimination, and therefore was not prohibited by the federal statute in issue. This decision came as a surprise to many people. It came as a surprise to many civil rights groups and organizations that

have worked for years to secure equal treatment for women. Basically, the Supreme Court decision is contrary to the understanding of sex discrimination that has been understood here in Minnesota with regard to the State's Human Rights Statute, and I would just point out that the purpose of this section is not to change Minnesota law but simply to clarify Minnesota law in light of this Supreme Court decision. Now the Supreme Court's opinion only affected the interpretation of the federal statute. It did not affect the interpretation of the Minnesota statute. . . . I think that if one looks back into the case history of complaints that have been filed and settled by the Minnesota Department of Human Rights, one will find several cases in which the Department of Human Rights, has taken cases involving sex discrimination in which an employee was essentially discriminated against on the basis of her pregnancy and those cases have been resolved in favor of the employee. . . . This is simply to clarify the meaning of the law. . . ."

. . .

Mr. Knickerbocker:

As I understand your explanation of the bill, you were saying that what you were trying to do was to put into statute what has been the policy of the Department of Human Rights as it relates to sex discrimination regarding pregnancy. Was I right?

. . .

Mrs. Wynia:

Yes, that's correct.

. . .

Mr. Knickerbocker:

And, how would the Supreme Court's decision relate to what we're putting in statute here. Are we going to be in conflict.

. . .

Mrs. Wynia:

. . . The federal Supreme Court case to which I referred was a case brought under federal statute and in making its decision the United States Supreme Court set down an interpretation of the federal statute. Now, the Minnesota Supreme Court is not obligated when it interprets the meaning of Minnesota statute to apply the same interpretation to a particular construction of words that the United States Supreme Court provides for an interpretation of federal statute. . . . We know the interpretation that has been given to the prohibition on the discrimination of sex in the Minnesota Human Rights Act but in light of this United States Supreme Court decision, let's just clarify the meaning consistently with the interpretation we have had in the past."

It is clear that the 1977 amendment to the Human Rights Act was meant to codify and clarify the then-existing law as it had been interpreted under Minn. Stat. § 363 (1969). No change was intended.

The United States Supreme Court in the case of *General Electric Company v. Gilbert*, —— U.S. ——, 97 S.Ct. 401 (1976), rendered a decision under Title VII of the Civil Rights Act regarding the interpretation of the federal statute prohibiting sex discrimination. The Court, by a five to four decision, found that an employer's disability benefit plan was not discriminatory because it did not include benefits for pregnancy. Several considerations went into that decision. One

consideration was the fact that at the time of enactment of Title VII, EEOC had issued an opinion letter which stated that a company's group insurance policy which excluded disabilities from pregnancy and child birth was not in violation of Title VII. The EEOC changed its position later when it issued its 1972 guidelines. However, the Court placed much reliance on the earlier opinion which was issued contemporaneously with Title VII. This is not the case in the State of Minnesota. The Minnesota Department of Human Rights has continuously, since the 1969 enactment of the law, interpreted sex discrimination to include pregnancy, and to require that pregnancy be included in disability plans.

The Court in *General Electric* has represented the plan as a gender free assignment of risks in accordance with normal actuarial techniques. However, this is not the framework which the State of Minnesota has viewed pregnancy. It has been consistent state policy since 1969 that discrimination based on pregnancy is illegal sex discrimination per se.

Pregnancy exclusion is neither neutral on its face, nor in its intent. The argument that pregnancy is voluntary is not a persuasive factor because, other than for child birth disabilities, the Respondent has never construed its plan as eliminating all so-called voluntary disabilities, including sport injuries, cosmetic surgery, male sex linked illnesses and other illness of like nature. Furthermore, Respondent's plan does not cover situations where a pregnant woman, or one recovering from child birth, is stricken by a different or unassociated illness, or where a woman who is pregnant has an abnormal pregnancy, which results in other disorders. Pregnancy affords the only disability, specific or otherwise that is excluded from coverage. As Justice Brennan states in his dissent in *General Electric*:

> "First, the plan covers all disabilities that mutually inflict both sexes. . . . Second, the plan ensures against all disabilities that are male-specific or have a predominant impact on males. Finally, all female-specific and impact disabilities are covered, except the most prevalent, pregnancy. . . . However one defines the profile of risk protected by *General Electric*, the determinative question must be whether the social policies and aims to be furthered by Title VII and filtered through the phrase "to discriminate" contained in section 703(a)(1) fairly forbids an ultimate pattern of coverage that ensures all risks except a commonplace one that is applicable to women but not to men. 97 S.Ct. at 417-418."

In *Brooklyn Union Gas Co. v. New York State Division of Human Rights*, 290 N.Y.S.2d 884 (1976), the highest court of New York State considered the question of whether or not employers must include pregnancy in their disability benefits programs and held that they must do so because to do otherwise would be sex discrimination. New York State had a disability benefits law which excepted pregnancy from the minimum benefits required by that law. The Court held that the disability benefits laws fixed a floor, not a ceiling on the benefits. It contained no prohibition against granting disability benefits in excess of those mandated by the disability benefits law. The Court held that the objective of the Human Rights Law was different from, though not necessarily at odds with, the objective of the disability benefits law. New York State's Human Rights Law had the same language regarding sex discrimination as Title VII. The N. Y. court examined the *General Electric* decision, and stated as follows:

> "We are aware, of course, that the United States Supreme Court has recently reached a contrary result in construing

> Title VII. . . . The pertinent provisions of that statute are substantially identical to those of section 296 of the executive law of the State of New York. The determination of the Supreme Court, while instructive, is not binding on our court as we now confront the contention of private employers that the provisions of our state's disability benefits law excuse their failure to conform to the standard that we have held our human rights law demands of public employers." 290 N.Y.S. 2d at 886.

The U.S. Supreme Court has interpreted Title VII contrary to what has been the practice in Minnesota. It is not necessary for this Hearing Examiner to follow the Court's decision in *General Electric*. *General Electric* was a federal case interpreting a federal statute. The legislative history of the Minnesota statute, the continuous practice of interpreting and enforcing it by the Department of Human Rights and the judicial decisions interpreting it have provided a history on which to base a finding that exclusion of pregnancy from an employment maintenance benefit plan is sex discrimination. We are not precluded from this finding by Title VII because Title VII only prohibits the enforcement of laws which are in conflict with it. There is no prohibition against enforcing a law which merely exceeds Title VII's jurisdiction.

The Respondent has raised the issue that the initial charging party relied on EEOC guidelines when making her charge. The charging party is not presumed to know which law she must rely on, nor is she required to cite the law correctly in her charge in order for it to be an effective one. She is not a lawyer, nor a judge. She is merely an employee who believes she has been wronged. To hold her to any greater standard would be inequitable.

The Respondent further states that pregnancy cannot be included in its IMP because it is not an illness or injury, and their plan only covers "illness or injuries". However, in reviewing the plan, illness or injury is not defined. The only clarification is one which excludes pregnancy. The record shows that things other than illness and injuries are covered, for example, doctor or dentist appointments, and cosmetic surgery. The Respondent, by relying on the terminology of its plan which states it covers "illness or injuries," is self-serving and does not assist us in our purposes. We must look beyond the mere words to see how they are applied. And in this case, they are applied to other things besides injuries and illnesses.

In conclusion, based upon our examination of the history of the Minnesota Human Rights Act, we must conclude that denial of income maintenance benefits because of pregnancy is sex discrimination under Minn. Stat. § 363 (1969) and Minn. Laws 1977, Ch. 408.

However, once having found this, we must look to see whether or not the Pension Reform Act of 1974 (hereinafter called "ERISA") affects the validity and application of the Minnesota Human Rights Act. ERISA Act § 514(a) states that the provisions of ERISA supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in Act § 4(a) and not exempt under Act § 4(b). This section was to take effect on January 1, 1975. Looking at Act § 3(3), we see that the term employee benefit plan means an employee welfare benefit plan. Act § 3(1) defines employee welfare plan as any plan, fund or program which was established or was maintained for the purpose of providing its participants or their beneficiaries through the purchase of insurance or otherwise (a) medical, surgical or hospital care or benefits, or benefits in the event of sickness,

accident, disability, death or unemployment. Therefore, unless Respondent's IMP is exempt under Act § 4(b), it falls within the purview of that section because it is an employee benefit plan as defined by ERISA. ERISA applies to any employee benefit plan established or maintained by any employer engaged in commerce, or in any industry or activity affecting commerce. See Act § 4(a)(1).

Act § 4(b) lists the exceptions to the Act. The Respondent's IMP does not fall under any of these exceptions.

Therefore, ERISA supersedes any and all state laws insofar as they relate to any employee benefit plan and insofar as those state laws purport to regulate, directly or indirectly, the terms and conditions of the employee benefit plans covered by ERISA. Act § 514(c)(2). This limitation does not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

In light of this analysis, it would appear that Minnesota Statutes § 363 is superseded by ERISA insofar as it attempts to directly or indirectly regulate the terms and conditions of Respondent's employee benefit plan, i.e., to require that pregnant employees be included in its IMP, unless the legislative intent was otherwise.

It is clear from the legislative history of ERISA that Congress intended that discrimination based on race, color, national origin, religion or sex, affecting participation in pension or profit sharing plans be prohibited under section 703 (a) of the Equal Employment Opportunity Act. 119 Cong. Rec. 30409-10 (September 19, 1973); 120 Cong. Rec. H4726 (February 28, 1974). Therefore, ERISA is subject to Title VII.

Was it intended that ERISA preempt state law even when those laws do not deal directly with employment benefit plans

but are laws of the nature of the Minnesota Human Rights Law? The ERISA language originally introduced in the House of Representatives with respect to preemption stated that the act would supersede any and all laws of the states insofar as they related to the fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans. H.R. 2, 93rd Cong. First Session (1973). The original Senate version of ERISA proposed that ERISA supersede state laws which were related to the subject matters regulated by the act. In explaining the bill as it came out of conference committee, Senator Javits stated as follows:

> "Both House and Senate bills provided for preemption of State law, but — with one major exception appearing in the House bill — defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on federal regulation, as well as opening the door to multiple and potential conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the federal regulatory scheme.
>
> Although the desirability of further regulation — at either the State or Federal level — undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required — but for certain exceptions — the displacement of State action in the field of private employee benefit programs. . . ." 120 Cong. Rec. 29942 (1974). See also S.R. 93-1090, 93rd Cong., 2d Sess. 383 (1974); 120 Cong. Rec. 29933 (1974).

Based upon the legislative history and the clear meaning of the words of ERISA, it is apparent that it was meant for ERISA to preempt the field insofar as state laws affected, either directly or indirectly, the terms and conditions of employee benefit plans. The Minnesota Human Rights Act requires that pregnant employees be covered by Respondent's IMP in order for the plan to be nondiscriminatory. In requiring coverage of pregnant employees by the plan, the State would be attempting to indirectly affect the terms and conditions of the plan. As such, it falls within the preemption provision of ERISA, and cannot be held to be effective. Respondent, as an employer which comes under the terms of ERISA by the nature of its business and by the nature of its employee benefit plan is subject to ERISA and is not subject to Minn. Stat. § 363 insofar as it requires that Respondent include pregnancy as a covered condition under their IMP. Employers covered under ERISA need only follow the requirements of Title VII and Title VII does not require that pregnancy be included in coverage under employee benefit plans.

The Complainant argues that the "enforcement of the Minnesota Human Rights Act does not conflict with the regulatory scheme of ERISA, and is not an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." See Complainant's Reply Brief, p. 4. We cannot find this to be so. It is clear from the legislative history and from the notes accompanying ERISA that one of the main purposes and objectives of Congress was to establish uniform laws throughout the United States insofar as they regard employment benefit plans. Any interference in this objective of uniformity is prohibited by the preemption clause of ERISA.

In light of the foregoing, the Respondent was not in violation of Minnesota Human Rights Act after January 1, 1975, and is under no obligation to change its IMP now.

To comply with this decision, it is necessary to recertify the class limiting it to those of Respondent's female salaried employees employed in Minnesota who had been on a pregnancy leave of absence from a salaried position at the Respondent between August 6, 1973, and December 31, 1974. Testimony will be taken regarding the damages, if any, to be awarded to the class.

E.L.

APPENDIX F

United States Constitution, Article VII, Clause 2.

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

---

29 USC § 1003(a)

§ 1003. Coverage.

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained —

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

29 USC § 1002(3)

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

---

29 USC § 1144

§ 1144. Other laws

Supersedure; effective date

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

Construction and application

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to

regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

Definitions

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of United States prohibited

(d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

Pub.L.93-406, Title I, § 514, Sept. 2, 1974, 88 Stat. 897.

Minn. Stat. § 363.03 Subd. 1(5)

363.03 **UNFAIR DISCRIMINATORY PRACTICES.** Subdivision 1. **Employment.** Except when based on a bona fide occupational qualification it is an unfair employment practice:

* * * * *

(5) For an employer, an employment agency or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work.

APPENDIX G

3M COMPANY
GENERAL OFFICES
3M Center
Saint Paul, Minnesota 55101
Tel. (612) 733-1110

August 29, 1975

EBS-1
U. S. Department of Labor
Washington, D.C. 20216
Gentlemen:

Enclosed are the EBS-1 forms for the 3M Company plans covering (1) Salaried Income Maintenance Plan and (2) Survivor's Death Benefit Plan.

Sincerely,
J. F. KEELY
Manager, Personnel
Services and Benefits

JFK:mf
Enc.

Form **EBS-1** (April 1975)

U.S. Department of Labor
Labor-Management Services Administration—Office of Employee Benefit Security

Plan Description

Form approved
OMB No. 44-R1596

This form is prescribed under the reporting and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974.

Department of Labor Use ONLY

A	B	C	D

Note: *Due to the use of certain specialized terms, it is important to refer to the instructions on an item by item basis when completing the form. Answer each item, or enter "None" or "N/A" (Not Applicable), as appropriate.*

Part I All Plans

1 Name of plan sponsor (see instructions)
Minnesota Mining and Manufacturing Company

Address (Number and street)
3M Center

PLACE LABEL HERE

City, town or post office, State and ZIP code
St. Paul, Mn. 55101

2 Name of plan administrator (see instructions)
Mr. James F. Keely

Business address (Number and street)
3M Company - 3M Center - 224-1E

City, town or post office, State and ZIP code
St. Paul, Mn. 55101

Business telephone number (including area code)
(612) 733-0062

4 Plan identification number
EIN 41-041775 PN 525

3 Name of plan
Salaried Income Maintenance Plan (U.S. & Puerto Rico)

5 DOL WP file number (if any)	6 Initial effective date of plan	Month	Day	Year	7 Ending date of plan's fiscal year	Month	Day
WP- 82213		7	1	58		12	31

8 Ending date of plan sponsor's fiscal year	Month	Day
	12	31

9 Complete Schedule A to show the administration of the plan.
10 Complete Schedule B for name, title and address of plan trustees.

11 Is the plan administrator designated as agent for the service of legal process? . . . . . Yes [X] No
If "No," enter the name of the person designated:
Name ► Mr. Charlton Dietz, Secretary
Business address (Number and street) ► 3M Company - 3M Center - 220-11E
City, town or post office, State and ZIP code ► St. Paul, Mn. 55101

12 Indicate type of plan (check all applicable boxes):

Welfare	[X]
Pension	[ ]
Defined benefit	[ ]
Individual account or defined contribution—	
Money purchase	[ ]
Target benefit plan	[ ]
Profit sharing	[ ]
Stock bonus	[ ]
Thrift or savings	[ ]
Other (specify) ►	[ ]
Keogh (H.R. 10) plan	[ ]
Individual retirement account	[ ]

13 Indicate the plan category for which this form is filed. See instructions (check one):

A single employer plan	[X]
A multiemployer plan	[ ]
Other plan (specify) ►	[ ]

14 Is this plan established or maintained pursuant to one or more collective bargaining agreements? . . . [ ] Yes [X] No
If "Yes," complete Schedule C.

15 List the plan documents establishing or affecting the plan. Do not submit copies of plan documents
Office Operating Manual
Money for Disability booklet

16 Number of participants . . . . . ► 23,362

17 This plan includes as participants (check all applicable boxes):

All types of employees	1 ☐
Hourly employees	1 ☐
Salaried employees	1 ☒
Employees covered by collective bargaining	1 ☐
Employees not covered by collective bargaining	1 ☐
Other (specify) ►	1 ☐

Indicate sites or geographical areas where a significant number of participants are located ► St. Paul, Mn.

18 Indicate the industry in which most of the participants are employed (check one):

Manufacturing	91 ☒
Construction	92 ☐
Transportation	93 ☐
Mining (including oil and gas extraction)	94 ☐
Communication and utilities	95 ☐
Services	96 ☐
Wholesale and retail trade	97 ☐
Finance, insurance and real estate	98 ☐
Agriculture, forestry and fisheries	99 ☐
Government	99 ☐
Other (specify) ►	11 ☐

19 Indicate sources of contributions to the plan (check all applicable boxes):

	Pension	Welfare
Employer	1	1 X
Employee organization (union, etc.)	1	1
Employee	1	1
Other (specify) ►	1	1

How is the amount of contribution from each source determined?

Current expense at time of benefit payment

20 Indicate the type of funding used for the accumulation of assets and for disbursement of benefits (check all applicable items):

	Pension		Welfare	
	Accumulation of Assets	Disbursements of Benefits	Accumulation of Assets	Disbursements of Benefits
General assets of employer or employee organization	1	1	1	1 X
Trust fund	1	1	1	1
Insurance	1	1	1	1
Other (specify) ►	1	1	1	1

Part IV All Plans

34 Describe other significant terms of the plan which have not been described elsewhere in this form.

35 Is this [ ] an initial filing, OR [ ] an amended filing?

36 If an amended filing:

	Month	Day	Year
(a) What is the effective date of the amendment? ►			

(b) Does it result in a reduction of accrued pens on benefits to participants? 1 ☐ Yes 1 ☐ No

(c) Is a merger with another plan or plans involved. If so, indicate the identification number of the other plan or plans?	EIN	PN	EIN	PN

37 Is this plan description to be used in lieu of the "Summary Plan Description?" 1 ☐ Yes 1 ☒ No

Any person who willfully violates any provision of Part 1 of Title I of this Act or any regulation or order issued under such provision shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000 (Sec. 501 of the Act.).

18 U.S.C. section 1027 provides penalties up to $10,000 fine or five years imprisonment, or both, for any person who, in any document required by the Act to be filed, furnished, or kept as part of the records of any covered plan, makes any false statement or representation of fact knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact required by the Act to be disclosed.

Under 18 U.S.C. section 1001 any one who knowingly and willfully falsifies, conceals or covers up a material fact or any one who uses a false document or statement knowing it to be false shall be subject to a fine of $10,000 or five years imprisonment or both.

38 Signatures — This plan description must be signed by the plan administrator. If no plan administrator has been designated by the terms of the instrument under which the plan is operated, a representative of the plan sponsor must be designated to sign for the plan sponsor as plan administrator. Where the plan administrator is a joint employer union board or committee, at least one employer representative and one union representative must sign the plan description.

Signature	Date	Type or print name	Name of company or union and position therein
[signature]	4-2-75	James F. Keely	3M Company Manager, Personnel Services and Benefits